In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.2886 of 2005.

Date of decision :12.1.2007.

Dilbagh Singh and another.

...Petitioners.

Versus

Gurtej Singh and others.

...Respondents.

...

Coram: Hon'ble Mr.Justie S. N. Aggarwal.

...

Present: Mr.Ajay Sharda Advocatefor the petitioner.

Mr.Kranti Dhir Advocate for respondent Nos.2,5 and 6.

...

Judgment.

S. N. Aggarwal, J.

The petitioners filed civil suit for declaration that they are the owners in possession of suit land measuring 35 Kanals 4 Marlas which they had purchased from Gurtej Singh vide sale deeds dated 13.2.1997 and 15.5.1997 for Rs.3,90,000/-. They also sought injunction against the respondents from interfering in their peaceful possession of the suit property.

The said application was contested by the respondents on the plea that Gurtej Singh had allegedly become the owner of this land on the basis of judgment and decree of the trial Court suffered by Marra Singh. The said judgment and decree have been set aside by the

learned Lower Appellate Court vide judgment dated 5.12.2000. It was also pleaded that neither Marra Singh was in possession of the suit property nor his son Gurtej Singh. Rather, Gurtej Singh was minor on the date of alleged sale deeds.

The learned trial Court held that prima facie possession of the petitioners over the suit land was not proved. Accordingly, the application for interim stay was dismissed by the learned trial Court vide order dated 15.6.2004.

The petitioners filed an appeal against that order. The learned Lower Appellate Court up-held the order passed by the learned trial Court and dismissed the appeal vide impugned order dated 6.4.2005.

Hence, the present revision petition.

The submission of learned counsel for the petitioners was that Marra Singh was shown in possession of the suit land in the revenue record and after the petitioners purchased the said property from Gurtej Singh son of Marra Singh, they have been shown in possession of suit property. Hence, it was prayed that the judgments of the Courts below be set aside and injunction be granted in favour of the petitioners restraining the respondents from interfering in the peaceful possession of the petitioners over the suit land.

This submission has been considered. The learned Lower Appellate Court while setting aside the judgment in favour of Gurtej Singh suffered by his father Marra Singh specifically held that there was nothing on record to suggest that Chhota Singh had ever relinquished the possession of these khasra numbers in favour of Marra

Singh or Gurtej Singh and,therefore, the delivery of possession of suit land by Marra Singh to Gurtej Singh was falsified. In other words, the learned Lower Appellate Court in the judgment dated 5.12.2000 held that Marra Singh or Gurtej Singh were not in possession of the suit land. Since Marra Singh or Gurtej Singh were not in possession of the suit land,they could not have passed over the possession of the suit land to the petitioners by executing sale deeds in their favour.

The submission of the learned counsel for the petitioners was that the judgment dated 5.12.2000 is subject matter of Regular Second Appeal before this Court and,therefore, that judgment has not become final. It may be so but admittedly the operation of the judgment dated 5.12.2000 has not been stayed. Therefore, prima facie the finding of fact about possession recorded in this judgment shall prevail.

In view of the discussion held above, there is no ground to interfere with the orders passed by the learned Courts below. There is no merit in the present revision petition and the same is dismissed.

January 12,2007. **(S. N. Aggarwal)**
Jaggi **Judge**